



COMMERCE COMMISSION

Statement of Preliminary Issues

Tomarata Sand / Coastal Resources

26 April 2010

11.4/12170

INTRODUCTION

1. On 13 April 2010, the Commerce Commission received an application from Tomarata Sand Limited seeking clearance to acquire the assets and business of Coastal Resources Limited relating to sand mining operations at Tomarata. The public version of the application can be accessed on the Commission's website at:

<http://www.comcom.govt.nz/assets/Uploads/Tomarata-Sand-Coastal-Resource-Ltd-Clearance-Application-April-2010.PDF>

Much of the information in the Application refers to a previous investigation by the Commission into a sand supply arrangement between Semenoff Sand Supplies Limited and Lakeside Business Park Limited. The public report of that investigation can be accessed on the Commission's website at:

<http://www.comcom.govt.nz/assets/Uploads/Semenoff-Sand-Supplies-Lakeside-Business-Park-Market-Behaviour-Investigation-Report-27-January-2010.PDF>

2. This Statement of Preliminary Issues outlines the key competition issues the Commission currently considers will be important in deciding whether or not to grant clearance. The issues highlighted in this statement are based on the information available at the time of publication, and may change as the Commission's assessment of the application for clearance progresses. Therefore, the issues highlighted in this Statement of Preliminary Issues are in no way binding on the Commission.
3. The Commission invites interested parties to make comment on the likely competitive effects of the proposed merger.

RELEVANT PARTIES

The Acquirer – Tomarata Sand Limited

4. Tomarata Sand Limited is a recently formed company owned by Stan Semenoff. Mr Semenoff also has interests in a number of other companies involved in the supply of sand in the Northland area including Semenoff Sand Supplies Limited, Envirosands Northland Limited and Kaipara Water Transport Limited.

The Target – Coastal Resources Limited

5. Coastal Resources Limited (CRL) is based in the Northland area and also supplies sand. The quarry where the sand is located is near Tomarata, which is east of Wellsford.

ANALYTICAL FRAMEWORK

6. In the context of an application for clearance, the Commission must consider whether or not an acquisition substantially lessens competition. The first step of the Commission's analytical framework¹ is to determine the relevant market or markets. To do this, the Commission identifies the areas of overlap between the acquirer and the target where aggregation of market share may arise from the proposed acquisition. The Commission then considers the relevant products and geographic regions that constitute close substitutes from both a customer's and a supplier's point of view.
7. The Commission uses a forward-looking type of analysis to assess the degree of any potential lessening of competition in the relevant market or markets arising from a proposed acquisition. Therefore, the next step is to establish the two hypothetical future scenarios:
 - with the acquisition in question (the factual); and
 - in the absence of the acquisition (the counterfactual).

The impact of the acquisition on competition is then viewed as the prospective difference between those two scenarios.

8. The Commission analyses the extent of competition in each relevant market for both the factual and counterfactual scenarios, in terms of:
 - existing competition - the degree to which existing competitors compete and their ability to expand production in the event that the combined entity raises prices;
 - potential competition – the ability of businesses to readily enter the market and thereafter expand, given an inducement to do so;
 - the countervailing market power of buyers - the potential for a business to be sufficiently constrained by purchasers' ability to exert an influence on price, quality and/or terms of supply;
 - coordinated behaviour – whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly; and
9. A comparison of the extent of competition in the relevant markets both with and without the acquisition enables the Commission to assess the degree by which the proposed acquisition may lessen competition. If the lessening is substantial the Commission may not give clearance to the proposed acquisition.

¹ Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

PRELIMINARY ISSUES

10. Of the factors outlined in the previous section, the Commission currently considers its focus in respect of the proposed acquisition will be on the following areas:

Areas of Overlap – Market Definition

11. At present, both Stan Semenoff and CRL supply sand, which is an important input in the making of ready-mix concrete. Stan Semenoff supplies sand from a site at Ruakaka, near Whangarei, while CRL supplies sand from a site near Tomarata, which is east of Wellsford.
12. In assessing the relevant market definition, the Commission will consider the geographic boundaries of the market. The Applicant submitted that sand from Tomarata, where CSL is located, does not generally compete with sand supplied from Whangarei/Ruakaka, from where Stan Semenoff supplies sand because of the cost of transporting sand. The Commission will investigate the degree of overlap between the various sand suppliers located across the Northland area and will also assess relative transport costs.

Existing Competition

13. The Commission intends to assess the level of existing competition between Stan Semenoff, CRL and other sand suppliers in the Northland area. This will include considering any evidence of customers switching between the various sand suppliers in the Northland area.
14. The Commission will also assess the capacity of existing sand suppliers in the region and their ability to expand their existing levels of supply and the ability of sand suppliers currently supplying sand to customers in Auckland to divert supply to customers located in the Northland area.

Potential Competition

15. The Commission is also interested in ascertaining how difficult it would be for a new entrant to start supplying sand in the Northland area, given sufficient incentive. The Commission will consider what licences and consents are required to supply significant quantities of sand, how long it would take to obtain the licences and consents including the ability of incumbent sand suppliers, or any other interested parties, to delay the licensing and consent processes.
16. In order to act as a constraint, entry must be likely. The Commission will therefore consider the likelihood of entry in the event that sand prices are increased in the Northland area.

Countervailing power

17. The Commission will assess whether any of the main sand customers, typically concrete firms, will be able to exercise any countervailing power against the combined entity through the threat of self supply, sponsorship of new entry or any other mechanism.

NEXT STEPS

18. In line with the Commission's Merger and Acquisitions Clearance Process Guidelines (available on the Commission's website at www.comcom.govt.nz), the Commission has

established a draft timeframe for consideration of the issues and Tomarata Sand's application for clearance. An extension of time was agreed to by the Applicant such that the Commission should make its final decision by 9 June 2010. However, also in line with the Merger and Acquisitions Clearance Process Guidelines, this timeframe could change. To keep abreast of possible changes in relation to timing and to find relevant documents, visit the Clearance Public Register on the Commission's website at:

<http://www.comcom.govt.nz/clearances-register>

19. As part of its investigation, the Commission will identify the parties it believes will provide the best information to help it assess the preliminary issues identified above. The Commission will be contacting those parties over the next few weeks.
20. The Commission also invites submissions from any other parties who consider they have information relevant to the Commission's consideration of this matter. If you wish to make a submission, please send it to the Registrar, at registrar@comcom.govt.nz with the reference Tomarata / Coastal Resources in the subject line of your email, or The Registrar, PO Box 2351, Wellington 6140 by 5pm on Wednesday 5 May 2010. Please clearly identify any confidential information contained in the submission and provide contact details.